

File

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
KITSAP COUNTY TO THE PARTNER-  
SHIP OF L. T. LARSON, J. A.  
MITCHELL and W. G. TENNISON

JOSEPH P. MENTOR,

Appellant,

v.

KITSAP COUNTY and THE  
PARTNERSHIP OF L. T. LARSON,  
J. A. MITCHELL AND W. G.  
TENNISON,

Respondents.

SHB No. 78-27

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of a substantial development permit issued to The Partnership of L. T. Larson, J. A. Mitchell and W. G. Tennison by Kitsap County, came before the Shorelines Hearings Board, Robert E. Beaty (presiding), Chris Smith, Rodney G. Proctor and William A. Johnson, at a hearing convened on September 25, 1978 in Tacoma, Washington. The matter had previously been remanded by this Board

DAA/REB/DO/LB

1 for clarification of the permit.

2 Appellant, Joseph P. Mentor, was represented by his attorney,  
3 Philip M. Best; respondents L. T. Larson, J. A. Mitchell and W. G.  
4 Tennison, were represented by their attorney, Thomas C. O'Hare; respondent  
5 Kitsap County, was represented by Dan Phillips, Deputy Prosecuting  
6 Attorney.

7 Having heard the testimony, having examined the exhibits, and having  
8 considered the contentions of the parties, the Shorelines Hearings Board  
9 makes these

#### 10 FINDINGS OF FACT

##### 11 I

12 The proposed substantial development is a 43-foot high hotel with  
13 approximately 129 guest rooms, related food and beverage facilities, and  
14 off street parking. The facility will be located on 5.5 acres of vacant  
15 waterfront property at the end of Dyes Inlet in Silverdale, Kitsap  
16 County, Washington. The site is near the intersection of Bucklin Hill  
17 Road with Clear Creek Road in an industrially developed area. The site  
18 in question was recently rezoned from a light manufacturing  
19 classification to a business general classification to allow this  
20 development. This appears to further regional planning goals which call  
21 for "deindustrializing" the "Head-of-the-Bay" district. A final planned  
22 unit development permit is still pending on this project. The entire  
23 development will be constructed on landfill which will be placed upland  
24 of the ordinary high tide on land that is not normally wet. An 1,100-foot  
25 concrete and rock bulkhead, with a footpath along the top, will be built  
26 to protect the upland property from high winter storm tides and erosion

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 The bulkhead will be designed to provide pedestrian access to the  
2 permittees' tidelands at three places. Appellant owns the major portion  
3 of the tidelands surrounding the site. At present, there is little  
4 opportunity for the public to gain access to the shoreline in the  
5 neighborhood.

## 6 II

7 The shoreline substantial development permit includes an earlier  
8 application bearing the same number, the instant application, a number  
9 of drawings as clarified at hearing (Exhibit A-2), and a permit with  
10 conditions attached, which documents provide sufficient information to  
11 evaluate the proposed development under the Shoreline Management Act (SMA).  
12 As appellant has pointed out, the application and permit appear to be  
13 deficient in several particulars, though no harm to any parties was  
14 adduced from these deficiencies.

## 15 III

16 No new notice of the second application was published in a manner  
17 prescribed by the SMA. The County did publish notice of a public hearing  
18 on the revised application. Appellant was personally served with notice  
19 of the hearing before the County Commissioners, and was represented by  
20 counsel at the hearing.

## 21 IV

22 Respondent-permittees stipulated at the hearing that an area set  
23 aside for 29 parking stalls on the west boundary of the property as  
24 depicted on the site plan would be left vacant, i.e., without structures  
25 although it may be landscaped and used for pedestrian access.

26 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
27 AND ORDER

V

One residence may have view impairment as a result of the proposed project. Appellant's restaurant, located northwest of the site, would have some degree of view impairment waterwards; though no evidence of the extent of that impairment was presented. The Board is satisfied that the view impairment is not substantial.

VI

The master program locates the instant site in an urban environment designation. The Kitsap County Shoreline Master Program defines the urban environment (at page 4-4) as follows:

URBAN ENVIRONMENT

Definition: An Urban Environment is defined as an area subject to the intensive human modification of natural features.

Purpose: The purpose of placing an area in an Urban environment is to ensure the proper utilization and concentration in the area by a multiplicity of intense urban uses, and to encourage the existence of desirable and pleasant urban shorelines in the County. Because shorelines suitable for urban uses are a limited resource, emphasis should be given to development within already developed areas and particularly to water-dependent industrial and commercial uses requiring frontage on navigable waters. Priority should also be given to public visual and physical access to water in the urban environment. It is intended that natural systems should be subordinate to man's use activities.

Commercial development under the Kitsap County Shoreline Master Program explicitly includes hotels and restaurants (p. 7-10).

The shoreline master program allows non-water-related uses, such as hotels, which provide public access to the shorelines. (Kitsap County Shoreline Master Program, p. 7-10.)

The master program has no mention of view or view blockage.

VII

Bulkheads are permitted in urban environments (Kitsap County Shoreline Master Program, p. 7-30). Under the policies of that section, the following criteria should be met:

POLICY:

Bulkheads should be constructed only for the protection of upland property or facilities not for the indirect purpose of creating land by filling behind the bulkhead.

Bulkheads should be located and constructed in such a manner as to not adversely affect nearby beaches and to minimize alterations of the natural shoreline.

Bulkheads should be constructed so as to not adversely affect adjoining property, to blend in with the surroundings and to not detract from the aesthetic qualities of the shoreline.

Bulkheads of rip-rap construction are preferred over the other types of construction, e.g., timber or concrete.

Proposals for landfill must comply with the landfill section of the Master Program.

Bulkheads should be constructed in line with adjacent bulkheads where adjacent bulkheads exist.

The above-cited landfill provisions do not appear to apply to the site in question insofar as the instant site is not normally submerged or submersible. (Kitsap County Shoreline Master Program, p. 7-23.)

There will be minimal disruption of area beaches insofar as there appears to be little littoral drift occurring in the area.

VIII

Respondents are required under the terms of the permit to place catch basins in parking areas and sedimentation and separation facilities for runoff. They have also stated their intention to connect the hotel to the Silverdale Sewer District #6, so septic tanks will not be required. The introduction of fresh water runoff into Puget Sound will have some

1 effect on lower elements of the food chain in the immediate area of the  
2 drain pipes, but there does not appear to be any potential for significant  
3 damage to the waters and life of Puget Sound through introduction of  
4 either runoff or sewage.

## 5 IX

6 Any Conclusion of Law which should be deemed a Finding of Fact is  
7 hereby adopted as such.

8 From these Findings the Board comes to these

## 9 CONCLUSIONS OF LAW

### 10 I

11 The Board's earlier Order of Remand (SHB No. 77-39) required the  
12 parameters of the proposed substantial development to be adequately  
13 described and to be ascertainable. In the earlier proceeding, the ultimate  
14 design of the project was to be subject to a Planned Unit Development  
15 permit which had not yet been acted upon by the County. However, it is the  
16 adequacy of the description of the project that was of primary concern, and  
17 not whether a Planned Unit Development permit had yet been issued.

### 18 II

19 Because the project remained the same throughout the proceedings, no  
20 published notice of the amended application pursuant to RCW 90.58.140(4)  
21 was required in the instant case.

### 22 III

23 The proposed substantial development does not violate RCW 90.58.320  
24 which applies where a structure more than 35 feet high would obstruct the  
25 views of a substantial number of residences on adjoining areas. Only one  
26 residence will be affected by the instant development. Moreover, the

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 master program does not prohibit a structure of the height here in  
2 question.

3 IV

4 The proposed substantial development is not inconsistent with the  
5 cited provisions of the SMA and the master program.

6 V

7 Appellant has withdrawn his claim that the Final Environmental Impact  
8 Statement (EIS) for this project was defective, and therefore the EIS  
9 is no longer an issue before us.

10 VI

11 While the permit and applications before the Board in this matter  
12 are not models of complete and efficient shoreline administration, we find  
13 that the appellant has not been prejudiced thereby and therefore accept  
14 them as adequate under the facts and circumstances of this case.

15 VII

16 While trespass may occur on appellant's property, we agree with  
17 respondents that appellant has the means to control it at his disposal  
18 if and when it becomes a problem.

19 VIII

20 Appellant's remaining contentions have either not been proved or  
21 are without merit.

22 IX

23 Any Finding of Fact which should be deemed a Conclusion of Law  
24 is hereby adopted as such.

25 From these Conclusions the Board enters this

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

ORDER

The shoreline substantial development permit shall be composed of the two applications, the permit with conditions and the modified (A-2), and is hereby remanded to Kitsap County to be issued in that form with the following additional conditions:

1. The County will monitor the quality of fill materials at the site to assure their compliance with the Kitsap County Shoreline Management Program.

2. The permittees shall allow access by the general public to the shoreline abutting the hotel at all hours when hotel guests are permitted access.

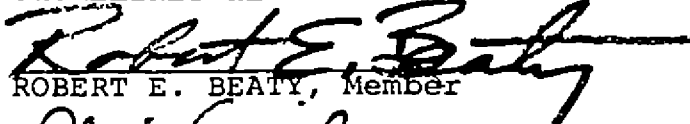
3. The permittees will eliminate 29 parking spaces as provided in Exhibit A-2, and devote the space to landscaping and open space.

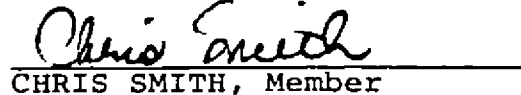
4. The permittees will not utilize septic tanks at the site and shall be required to utilize whatever means are necessary to hook up the sewage lines in the area.

5. The open space area required in this permit will be construed as delineated in Exhibit A-2.

DONE at Lacey, Washington, this 27<sup>th</sup> day of October,

SHORELINES HEARINGS BOARD

  
ROBERT E. BEATY, Member

  
CHRIS SMITH, Member

  
RODNEY G. BROCTOR, Member

  
WILLIAM A. JOHNSON, Member